



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/919,747
Inventor: Joseph C. Murray
Filing Date: 08/01/2001
Title: Insulating Packaging Material and
Related Packaging System

DECLARATION OF JOSEPH C. MURRAY

1. I am the inventor for U.S. Patent Application No. 09/919,747 ("the '747 application"). I am submitting this declaration to provide the facts, as best as I know them, in support of the Petition to Revive for this currently abandoned application.
2. Briefly, neither my original company, Thermal Products, Inc., nor my current company, ThermaFreeze Products Corporation, nor I ever had any intention of letting this application go abandoned, nor could we have done anything else in our power to ensure that a response was filed to the last Office Action (or any, for that matter) in a timely manner. That the '747 application went abandoned was unintentional, unavoidable, and, until recently, unknown to me or anyone else at either company. Details of the circumstances leading up to its abandonment follow.

Previous Patent Attorney: C. Emmett Pugh

3. In 1998, I hired C. Emmett Pugh, a registered patent attorney in nearby Louisiana. I had Mr. Pugh prepare and file my third patent application (the first two are not at issue here), serial no. 09/079,872, on May 15, 1998, which later matured into U.S. Patent No. 6,269,654 in 2001 ("the '654 patent") on August 7, 2001.

4. I was very pleased with the work Mr. Pugh was doing for me, and I had him prepare and file my fourth patent application, serial no. 09/366,466, on August 3, 1999, which later matured into U.S. Patent No. 6,536,189 ("the '189 patent") in 2003.

5. In 1999, I instructed Mr. Pugh to obtain the files from another attorney, the one who handled my first two patent applications (the ones that matured into U.S. Patent Nos. 5,628,845, "the '845 patent", and 5,966,962, "the '962 patent"), so that Mr. Pugh would be in charge of my entire patent portfolio. I was under the impression that he did so.

6. All four of the above-referenced patent applications were assigned to Thermal Products, Inc. (see below) as they were filed. In 2001, Mr. Pugh filed a fifth patent application for me, the '747 patent application which is the subject of the instant Petition to Revive, a continuation-in-part (CIP) application based on the fourth application. This application was also intended to be assigned to Thermal Products, Inc.

Thermal Products, Inc.

7. Thermal Products, Inc. was a company I and a few others founded in 1994 for the purpose of commercializing the inventions described in the five patent applications. I was an officer in Thermal Products, Inc., and Tom Pryor was the CEO and CFO. Thermal Products, Inc. has recently been restructured/reorganized into my current company, ThermaFreeze Products Corporation, of which I am the President.

8. Thermal Products, Inc. was a small company with very few people. As the main inventor and as an officer, I had primary responsibility for maintaining contact with Mr. Pugh concerning the status of the patent portfolio.

2001-2006

9. In 2000, I began to get sick during a trip to Switzerland. I had no idea what the cause was.

10. The illness got steadily worse during 2001, to the point where travel even within the United States became difficult and then impossible.

11. In the spring of 2002, I was diagnosed with stage IV colon cancer. I had major surgery on October 31, 2002, in which eight inches of my large intestine were removed.

12. Throughout all of 2003 and 2004, I underwent numerous rounds of chemotherapy and radiation treatment. I was chiefly focused on my health, not my business.

13. During 2002-2004, I had intermittent contact with Mr. Pugh. What contact I did have essentially consisted of the instructions to "maintain the patents." He assured me that he would and that he would work on the '747 application when the time came. I thought that by instructing my patent attorney not to abandon the '747 application that it would be dealt with in a timely and correct manner.

14. Also during this period of 2002-2004, Tom Pryor was supposed to have some responsibility for maintaining contact with Mr. Pugh. However, in or around 2001, Mr. Pryor suffered a stroke. He recovered somewhat and continued to serve as CEO and CFO of Thermal Products, Inc. for a while. Unfortunately, Mr. Pryor passed away in 2004.

15. In early 2005, a physical examination uncovered a baseball-size tumor on the back of my liver. In May of 2005, I underwent a second major surgery in which the tumor and 20% of my liver were removed.

16. During the rest of 2005 and the first portion of 2006, I underwent very extensive chemotherapy. As a result, I was predominantly focused on my health, not my business. I did, at some point during that time, inquire of Mr. Pugh as to the overall status of the portfolio, the specific payment of the maintenance fees, and the status of the pending (or so I thought) '747 application. He reassured me that everything was being taken care of and in order.

Mr. Pugh's Decline

17. Thankfully, on June 6, 2006, I was diagnosed as cancer-free. I began to re-assume the duties and responsibilities of attempting to commercialize my inventions almost at once.

18. In June 2006, I telephoned Mr. Pugh to determine the status of the patent portfolio. He told me everything was up to date. As I asked for details, however, he told me he had just fallen and was experiencing serious distress. Immediately, I called his wife at work. I later learned Mr. Pugh had suffered a major debilitating stroke while we were speaking on the telephone about my patent portfolio.

19. After that telephone call, over the course of the next several months, I made several additional telephone calls to inquire as to his health and to inquire about the details of our patents and pending application. On one occasion, I spoke with his wife, who indicated he was not well. On at least one subsequent occasion, I was able to reach Mr. Pugh directly. In none of our post-stroke telephone conversations was Mr. Pugh coherent nor did Mr. Pugh make any sense.

20. Unfortunately, Mr. Pugh was, to my knowledge, a sole practitioner. As such, no one else was left in his office who could help us determine what the status was of our portfolio.

21. I experienced several months of unsuccessful attempts to reach Mr. Pugh in a meaningful way, after which I sought new counsel.

Pryor Cashman LLP

22. In late July 2007, I hired new attorneys at the law firm of Pryor Cashman LLP to help with the reorganization of Thermal Products, Inc. into ThermaFreeze Products

Corporation. Attorney Eric Hellige of Pryor Cashman LLP has been working on the corporate restructuring since then.

23. In late August 2007, the subject of the patent portfolio came up with Mr. Hellige. Shortly thereafter, Mr. Hellige referred me to his law partners, Andrew Langsam and Barry Negrin, both patent attorneys.

24. Since September 2007, I have been working closely with Mr. Langsam and Mr. Negrin on the Petitions being filed along with this Declaration. On September 11, 2007, Mr. Langsam was the first person to tell me the actual status of my issued patents: three had expired at the time. On September 28, 2007, Mr. Negrin was the first person to tell me the actual status of the '747 patent application: it had been abandoned three times under Mr. Pugh's watch.

25. Since then, Mr. Negrin has been in frequent and close contact with me and with Bob McGuire, another Thermal Products officer, trying to ascertain the facts surrounding how the application and patents came to be abandoned despite my instructions to Mr. Pugh. Additionally, on October 15, 2007, Mr. Negrin filed a Petition to Revive the '189 patent. I am told that Petition was granted and that the '189 patent is once again in force.

26. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the

Declaration of Joseph C. Murray
In Support of Petition to Revive
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like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent(s) issued thereon.

Executed in MOBILE, AL (location)

Date: 12-18-2007

By 

Joseph C. Murray